

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 279

Citations Affected: IC 13-11-2; IC 13-19-4; IC 13-20.

Synopsis: Environmental law. Provides that good character requirements apply only to an applicant for the issuance, transfer, or major modification of a permit for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility. Excepts from the requirements certain entities that already hold permits, but limits the exception in certain cases where ownership interests change. Expands the definition of solid waste processing facility. With respect to requirements to demonstrate local or regional need for applications for permits for certain solid waste facilities, excepts certain limited liability companies from the requirements and applies the requirements to solid waste disposal and processing facilities (except transfer stations) instead of solid waste management facilities. Eliminates a requirement for inclusion of certain information in a manifest for transportation of municipal waste from a solid waste processing facility. Amends procedures and limitations concerning suspension of authority to engage in waste transfer activities. Repeals certain requirements concerning the submission of disclosure statements by solid waste operators and responsible parties, and the posting of surety bonds by nonresident operators. **(This conference committee report deletes provisions concerning: (1) reporting to the state board of accounts by a solid waste management district that owns its own landfill; (2) public school setback requirements for certain solid waste landfills; and (3) exemption of a solid waste management district from the requirement that the fiscal body of a county in which a district is located must approve the use of property tax revenue within the district under certain circumstances.)**

Effective: July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 279 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 13-11-2-8 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) "Applicant", for
- 4 purposes of IC 13-19-4, means an individual, a corporation, a limited
- 5 liability company, a partnership, or a business association that:
- 6 (1) receives, for commercial purposes, solid or hazardous waste
- 7 generated offsite for storage, treatment, processing, or disposal; and
- 8 (2) applies for the issuance, ~~renewal~~, transfer, or major
- 9 modification of a permit described in IC 13-15-1-3 other than a
- 10 post-closure permit or an emergency permit.
- 11 **For purposes of this subsection, an application for the issuance of**
- 12 **a permit does not include an application for renewal of a permit.**
- 13 (b) "Applicant", for purposes of IC 13-20-2, means an individual, a
- 14 corporation, a limited liability company, a partnership, or a business
- 15 association that applies for an original permit for the construction or
- 16 operation of a landfill.
- 17 (c) For purposes of subsection (a), "applicant" does not include an
- 18 individual, a corporation, a limited liability company, a partnership, or
- 19 a business association that:
- 20 (1) generates solid or hazardous waste; and
- 21 (2) stores, treats, processes, or disposes of the solid or hazardous
- 22 waste at a site that is:
- 23 (A) owned by the individual, corporation, partnership, or

business association; and

(B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

SECTION 2. IC 13-11-2-206 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 206. "Solid waste disposal facility", for purposes of IC 13-19-3-8.2, **IC 13-19-4**, IC 13-20-4, and IC 13-20-6, means a facility at which solid waste is:

- (1) deposited on or beneath the surface of the ground as an intended place of final location; or
- (2) incinerated.

SECTION 3. IC 13-11-2-212 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 212. (a) "Solid waste processing facility", for purposes of IC 13-19-3-8.2, **IC 13-19-4**, **IC 13-20-1**, IC 13-20-4, and IC 13-20-6, means a facility at which at least one (1) of the following is located:

- (1) A solid waste incinerator.
- (2) A transfer station.
- (3) A solid waste baler.
- (4) A solid waste shredder.
- (5) A resource recovery system.
- (6) A composting facility.
- (7) A garbage grinding system.
- (8) A medical or an infectious waste treatment facility.**
- (9) A solid waste solidification facility that is not located on an operating, permitted landfill.**
- (10) A facility that uses plasma arc or another source of heat to treat solid waste.**

(b) The term does not include a facility or operation that generates solid waste.

SECTION 4. IC 13-19-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. **(a) Except as provided in section 8(e) of this chapter**, this chapter does not apply to:

- (1) an applicant for a transfer stations station permit that holds a permit for and continuously operates; or**
 - (2) the transfer of a permit for a transfer station to an applicant that holds a permit for and is operating;**
- a transfer station, solid waste disposal facility, or hazardous waste facility in Indiana after December 31, 2004.**

(b) Except as provided in section 8(e) of this chapter, this chapter does not apply to the transfer of a permit for a solid waste disposal facility to an applicant that holds a permit for and is operating a solid waste disposal facility or hazardous waste facility in Indiana after December 31, 2004.

SECTION 5. IC 13-19-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. Before an application for the issuance, ~~renewal~~, transfer, or major modification of a permit ~~described in IC 13-15-1-3~~ **for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility**

may be granted, the applicant and each person who is a responsible party with respect to the applicant must submit to the department:

(1) a disclosure statement that:

(A) meets the requirements set forth in section 3(a) of this chapter; and

(B) is executed under section 3(b) of this chapter; or

(2) all of the following information:

(A) The information concerning legal proceedings that:

(i) is required under Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); and

(ii) the applicant or responsible party has reported under form 10-K.

(B) A description of all judgments that:

(i) have been entered against the applicant or responsible party in a proceeding described in section 3(a)(3) of this chapter; and

(ii) have imposed upon the applicant or responsible party a fine or penalty described in section 3(a)(3)(A) of this chapter.

(C) A description of all judgments of conviction entered against the applicant or responsible party within five (5) years before the date of submission of the application for the violation of any state or federal environmental protection law.

SECTION 6. IC 13-19-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Subject to subsection (b), the commissioner may deny an application for the issuance, ~~renewal~~, transfer, or major modification of a permit ~~described in IC 13-15-1-3~~ **for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility** if the commissioner finds that:

(1) the applicant or a responsible party has intentionally misrepresented or concealed any material fact in a statement required by section 2 or 3 of this chapter;

(2) a civil or administrative complaint described in section 3(a)(3) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(3) a criminal complaint described in section 3(a)(4) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(4) a judgment of criminal conviction described in section 3(a)(5) or 3(a)(6) of this chapter has been entered against the applicant or a responsible party within five (5) years before the date of submission of the application; or

(5) the applicant or a responsible party has knowingly and repeatedly violated any state or federal environmental protection laws.

(b) The commissioner may not deny a permit under this section based solely upon pending complaints disclosed under section 3(a)(3)(B) or 3(a)(4) of this chapter.

SECTION 7. IC 13-19-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. Before making a determination to deny an application for the issuance, ~~renewal~~, transfer,

or major modification of a permit under section 5 of this chapter, the commissioner shall consider the following mitigating factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal);

or

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal);

whether the matter has been resolved.

(3) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal);

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal); or

(C) a judgment of conviction referred to in section 5(a)(4) of this chapter or IC 13-7-10.2-4(a)(4);

whether any appeal is pending.

(4) The degree of culpability of the applicant or responsible party.

(5) The applicant's or responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in complaints and convictions referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(6) The applicant's or responsible party's dissociation from any other persons or entities convicted of acts referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(7) Prior or subsequent self-policing or internal education programs established by the applicant to prevent activities referred to in section 5(a) of this chapter or IC 13-7-10.2-4(a) (before its repeal).

(8) Whether the best interests of the public will be served by denial of the permit.

(9) Any demonstration of good citizenship by the applicant or responsible party.

SECTION 8. IC 13-19-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) In taking action under this chapter on an application for the issuance, ~~renewal~~, transfer, or major modification of a permit ~~described in IC 13-15-1-3~~, **for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility**, the commissioner shall make separately stated findings of fact to support the action taken.

(b) The findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. However, when the commissioner denies an application, the commissioner is not required to explain the extent to which any of the mitigating factors set forth in section 6 of this chapter influenced the commissioner's determination to deny the application.

SECTION 9. IC 13-19-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does

not apply to the transfer of ownership of a facility from a permittee whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste to a prospective owner whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste.

(b) If there is a prospective change of **the entire ownership interest** in a facility for which a permit described in IC 13-15-1-3 is required, the prospective owner, at least one hundred eighty (180) days before the proposed change in ownership, ~~may~~ **shall** submit to the commissioner a disclosure statement that:

(1) includes the information required by section 3(a) of this chapter; and

(2) was executed under section 3(b) of this chapter.

(c) The commissioner:

(1) shall review the disclosure statement **submitted under subsection (b);** and

(2) may investigate and verify the information set forth in the disclosure statement.

(d) If the commissioner determines that:

(1) the information disclosed by the disclosure statement **submitted under subsection (b);** and

(2) any investigation by the commissioner;

would require the commissioner to deny the prospective owner's permit application if the prospective owner were applying for a permit under section 2 of this chapter, the commissioner shall disapprove the transfer of ownership of the facility to the prospective owner.

(e) If:

(1) **subsection (b) does not apply; and**

(2) **there is a change of at least fifty percent (50%) ownership control of an entity that holds a permit described in IC 13-15-1-3, including an entity referred to in section 1 of this chapter (other than an entity referred to in subsection (a));**

the entity must, not later than thirty (30) days after the change of ownership control is completed, submit to the department the disclosure statement referred to in subsection (b).

(f) The commissioner:

(1) shall review the disclosure statement submitted under subsection (e); and

(2) may investigate and verify the information set forth in the disclosure statement.

(g) If the commissioner determines:

(1) that:

(A) the information disclosed by the disclosure statement submitted under subsection (e); and

(B) any investigation by the commissioner;

would require the commissioner to deny an application for a permit described in IC 13-15-1-3 if the entity that submits the disclosure statement were applying for a permit under section 2 of this chapter; or

(2) that an entity failed to submit to the department a timely disclosure statement under subsection (e);

1 **the commissioner shall revoke any permit described in IC 13-15-1-3**
 2 **held by the entity.**

3 SECTION 10. IC 13-20-1-1 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter does
 5 not apply to an individual, a corporation, a partnership, **a limited**
 6 **liability company**, or a business association that in its regular business
 7 activity:

8 (1) produces solid waste as a byproduct of or incidental to its
 9 regular business activity; and

10 (2) disposes of the solid waste at a site that is:

11 (A) owned by the individual, corporation, partnership, **limited**
 12 **liability company**, or business association; and

13 (B) limited to use by that individual, corporation, partnership,
 14 **limited liability company**, or business association for the
 15 disposal of solid waste produced by:

16 (i) that individual, corporation, partnership, **limited liability**
 17 **company**, or business association; or

18 (ii) a subsidiary of an entity referred to in item (i).

19 SECTION 11. IC 13-20-1-2 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A person that applies
 21 for a permit ~~described in IC 13-15-1-3 that concerns a solid waste~~
 22 ~~management facility for a solid waste disposal facility or a solid~~
 23 ~~waste processing facility, except for a transfer station,~~ must
 24 demonstrate that there is a local or regional need in Indiana for the
 25 facility.

26 SECTION 12. IC 13-20-1-3 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A person that applies
 28 for a permit referred to in section 2 of this chapter must submit the
 29 following information to the department along with the permit
 30 application:

31 (1) A description of the area that would be served by the solid
 32 waste ~~management disposal or processing~~ facility.

33 (2) A description of existing solid waste management facilities in
 34 the area that would be served by the solid waste ~~management~~
 35 **disposal** facility.

36 (3) A description of the need that would be fulfilled by constructing
 37 the solid waste ~~management disposal~~ facility.

38 SECTION 13. IC 13-20-1-4 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. If the department
 40 determines that there is not a local or regional need in Indiana for the
 41 solid waste ~~management disposal~~ facility, the person referred to in
 42 section 2 of this chapter may not receive a permit described under
 43 IC 13-15-1-3 of this chapter. If a permit is denied under this ~~subsection;~~
 44 **section**, the department must provide the person referred to in section
 45 2 of this chapter with a statement describing the reasons the department
 46 denied the permit.

47 SECTION 14. IC 13-20-4-7 IS AMENDED TO READ AS
 48 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) This section
 49 applies to the transportation of municipal waste from solid waste
 50 processing facilities.

51 (b) A shipment of municipal waste in a municipal waste collection

and transportation vehicle must be accompanied by a municipal waste transportation manifest.

(c) A manifest required under subsection (b) must include the following information:

(1) The amount in tons of municipal waste transported in the vehicle.

(2) The name and address of the solid waste processing facility from which the municipal waste is transported.

(3) The destination of the municipal waste.

(4) The name of the person transporting the municipal waste.

~~(5) If the municipal waste is transported from a transfer station that receives municipal waste, the identity of and acknowledgement number issued by the department under IC 13-20-6-5 or IC 13-7-10.5-14 (before its repeal) to the following:~~

~~(A) The transporter of the municipal waste;~~

~~(B) The transfer station from which the municipal waste is transported;~~

~~(C) A broker involved in the transportation of the municipal waste;~~

(d) The owner or operator of the solid waste processing facility from which municipal waste is to be transported shall:

(1) prepare the manifest required by subsection (b); and

(2) deliver the manifest to the operator of the vehicle.

(e) The operator of the vehicle shall:

(1) carry the manifest while transporting the municipal waste; and

(2) present the manifest to the owner or operator of the facility to which the municipal waste is transported.

(f) The owner or operator of the facility to which the municipal waste is transported shall:

(1) retain each manifest for one (1) year; and

(2) send one (1) copy of each manifest to the department not later than three (3) months after receiving a manifest for at least one (1) year.

SECTION 15. IC 13-20-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The commissioner may, by order, do the following:

(1) Suspend the waste transfer activities of an operator who is not a resident of Indiana if the operator is not properly licensed, certified, or permitted to conduct waste transfer activities in another state in which the operator does business.

(2) Suspend the waste transfer activities of a transfer station that does not meet the requirements of the inspection program established under section 7 of this chapter.

(b) An order issued by the commissioner under this section requiring an operator or transfer station to suspend operations must contain the date by which waste transfer activities must be suspended.

(c) After issuing an order requiring an operator or transfer station to suspend waste transfer activities but before the date by which the activities must be suspended, the department must provide notice by certified mail, return receipt requested, to the following:

(1) Each regulated solid waste processing facility in Indiana.

(2) Each regulated solid waste disposal facility in Indiana.

~~(3) Each broker and transporter that has submitted a disclosure statement under section 2 of this chapter.~~

(d) The notice described under subsection (c) must contain the following:

(1) The name of the operator or transfer station subject to the order.

(2) The date on which waste transfer activities are suspended under the order.

~~(3) The acknowledgement number issued to the operator under section 5 of this chapter.~~

~~(4)~~ (3) If the order applies to a transfer station, the location of the transfer station.

(e) Upon a determination by the commissioner that an operator previously ordered to suspend waste transfer activities may engage again in waste transfer activities, the department shall immediately provide notice by certified mail, return receipt requested, to each:

(1) regulated solid waste processing facility in Indiana; **and**

(2) regulated solid waste disposal facility in Indiana; **and**

~~(3) broker and transporter that submitted a disclosure statement under section 2 of this chapter;~~

that the operator or transfer station will be allowed to resume waste transfer activities. The notice required under this subsection must contain the date on which the operator or transfer station will be allowed to resume waste transfer activities

SECTION 16. IC 13-20-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) An operator who is not a resident of Indiana or a transfer station may not engage in waste transfer activities while the operator or transfer station is suspended from engaging in waste transfer activities under section ~~3~~ **or** 4 of this chapter.

(b) On or after the effective date established under a rule adopted by the board, a solid waste disposal facility or a solid waste processing facility located inside Indiana may not knowingly accept municipal waste from a transfer station located inside of or outside of Indiana that receives municipal waste if:

(1) the municipal waste is not accompanied by a manifest that contains the information required under IC 13-20-4-7; or

(2) the person who manages the solid waste disposal facility or solid waste processing facility has received notice under section 4(c) of this chapter that:

(A) the transfer station that shipped the municipal waste; or

(B) an operator listed on the manifest;

has been suspended from engaging in waste transfer activities under this chapter.

SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-11-2-210; IC 13-20-6-2; IC 13-20-6-3; IC 13-20-6-5; IC 13-20-6-6.

SECTION 18. [EFFECTIVE JULY 1, 2005] (a) **For purposes of this SECTION, "transfer station" has the meaning set forth in IC 13-11-2-235(a).**

(b) **329 IAC 11-9-5 is void to the extent that the rule applies to**

1 **transfer stations.**

2 **(c) The solid waste management board shall amend 329**

3 **IAC 11-9-5 so that the rule is consistent with subsection (b).**

 (Reference is to ESB 279 as printed March 30, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 279

Signed by:

Senator Gard
Chairperson

Representative Wolkins

Senator Hume

Representative Micon

Senate Conferees

House Conferees